

## **CBSA ENFORCEMENT MANUAL**

### **Part 3**

### **SELECTION**

#### **Chapter 7**

#### **CONFIDENTIAL HUMAN SOURCE POLICY**

## **POLICY STATEMENT**

1. It is the policy of the Canada Border Services Agency (CBSA) to only interact with Confidential Human Sources (CHS) within a well-managed and monitored CHS program, for recruiting, developing and handling persons and information. The program is based on the CBSA's commitment to the principles of: confidentiality, sound risk management and responsible financial and resource accountabilities.

## **EFFECTIVE DATE**

2. This policy came into effect on September 5, 2014, and replaces all previously issued policies and directives related to the use of CHS and/or informants.

## **TRANSITIONAL MEASURES**

3. The responsible Director General (DG), Operations Branch, in consultation with the responsible Director General, Programs Branch, may grant exceptions on a regional basis to allow management of CHS cases to continue where training and certification under this policy have not occurred. Exceptions made under this provision will expire 2 years after the effective date.

## **PURPOSE AND SCOPE**

4. The purpose of this policy is to govern the CBSA's interaction with CHS and the management of the information they provide to the CBSA.
5. This policy sets out who may engage in activities with CHS program participants. It applies to all activities related to CHS program participants and potential CHS program participants, and the CBSA CHS program, including engaging in joint activities with other agencies.
6. This policy applies to all CBSA employees.

## DEFINITIONS

### 7. Note: The following definitions pertain to this policy:

**Administration** – administration of the CHS program, including managing the human resources, the registration process and the financial activities.

**Agent** – a person who acts on the direction of a law enforcement officer to assist in the development of a target operation. Direct involvement and association with a target may result in an agent becoming a material and compellable witness.

**Anonymous Source** – a Human Source whose identity is unknown. This type of source could be encountered through the Border Watch Line, Crime Stoppers or other methods of contact. Any information of potential intelligence or enforcement value received by a CBSA employee from an Anonymous Source should be reported using established referral mechanisms within the CBSA.

**Canadian Fundamental Institutions (CFI)** – include political, religious, post-secondary and media establishments. Members of a political CFI include provincial or territorial elected officials and Canadian federal government officials including “exempt” staff.

**CBSA employee** – any person employed by the CBSA in the administration or enforcement of acts and regulations known as “program legislation” as defined in section 2 of the *CBSA Act*.

**Certified CHS Officer** – a regional CBSA officer who has successfully completed a nationally approved CBSA CHS training program and has received and retained certification.

**Co-handler** – a Certified CHS Officer assigned by the DRC to assist the Handler or to act as an alternate to the Handler.

**Confidential Human Source (CHS)** - a member of the public who volunteers information of potential intelligence or enforcement value to the CBSA, who requests that their identity be treated confidentially and receives assurances of confidentiality from a Certified CHS Officer, without expectation that a relationship with the Certified CHS Officer will be initiated or maintained.

**CHS program participant** – a person who:

- is willing to provide information of value, related to the mandate of the CBSA, that cannot be easily obtained through other sources;

and

- indicates to a CBSA employee that he/she wishes his/her identity to be treated confidentially;

and

- after a positive CBSA evaluation, receives an assurance of confidentiality from a Certified CHS Officer and is registered within CBSA as a CHS program participant.

**Confidential Human Source Coordinator (CHSC)** – a CBSA Senior Advisor located at Headquarters (HQ) who coordinates the national administration of the CHS program.

**Confidential Human Source Program (CHS Program)** – a CBSA nationally administered program that involves management, coordination and operations pertaining to CHS.

**Confidentiality** – protection of a person's identity and the information that he or she provides, within the CBSA and between the CBSA and its law enforcement and intelligence partners.

**Designated Regional Coordinator (DRC)** – a regional CBSA Manager of Enforcement and Intelligence (E&I) who has been designated by a Regional Director of E&I to provide operational guidance and carry out the regional administration activities of the CHS program. The DRC must have successfully completed a nationally approved CBSA CHS training program, received certification and a briefing session with the CHSC.

**Front-Line Manager** – a CBSA Supervisor of a CHS Certified Officer who has successfully completed a nationally approved CBSA CHS training program and has received certification. The Front- Line Manager may act as a Handler or Co-handler.

**Handler** – a Certified CHS Officer assigned by the DRC to be the primary contact with a particular or potential CHS program participant.

**Human Source** – a member of the public who volunteers information of potential intelligence or enforcement value to the CBSA.

## AUTHORITIES

8. Authority for the CBSA to recruit, develop and manage CHS program participants arises from the duty of CBSA officers to administer and enforce program legislation. This authority supports the use of CHS as an investigative technique in criminal investigations, in inland enforcement investigations, and as an intelligence tool to enable enforcement of CBSA program legislation. The authority for the CHS program only exists with respect to a program or activity the CBSA is responsible for pursuant to program legislation.

## POLICY GUIDELINES

9. **Notwithstanding any provision or procedure contained in this policy and its associated procedures, any issue that is likely to cause embarrassment or controversy for the CBSA or the Government of Canada must be immediately reported to the Canada Border Services Agency Executive via the Vice-President (VP) of Operations Branch.**

### General

10. The CBSA recognizes that valuable information supporting enforcement and intelligence activities can be obtained from relationships with Confidential Human Sources, provided that their identities are treated confidentially due to a risk of danger to those persons as a result of their disclosure of the information to the CBSA.
11. The CBSA recognizes that the use of CHS information brings with it a number of risks, which include:

- a. Risk of civil liability against CBSA in the event that injury or harm comes to the Human Source;
  - b. Risk of civil liability against CBSA in the event that injury or harm comes to the Handler or Co-handler of the Human Source;
  - c. Risk of civil liability against CBSA in the event that the Human Source causes injury or harm to somebody else; and
  - d. Risk of criminal liability against persons employed by CBSA in the event that the Human Source engages in criminal activity.
12. When a person is willing, under the condition of confidentiality, to give the CBSA information of sufficient value that it outweighs potential risks, and the CBSA approves of the person, the CBSA shall register a person as a CHS program participant.
13. A Confidential Human Source with whom the CBSA has an ongoing relationship involving the giving of information shall be registered in the CHS program, in accordance with this policy.
14. Only a Certified CHS Officer shall be authorized to maintain a relationship with a CHS program participant for the purpose of obtaining information related to the CBSA mandate.
15. In-person contact with CHS program participants must take place in a safe location, in the presence of two Certified CHS Officers, and must have an operational plan that addresses the risk and is approved by a DRC.
16. Successful completion of a nationally approved CBSA CHS training program shall be required to obtain the designation of Certified CHS Officer.
17. A Certified CHS Officer must possess and retain CBSA Duty Firearm Course (DFC) certification at all times.
18. Certified CHS Officers shall not knowingly maintain relationships with Confidential Human Sources or CHS program participants outside of the parameters of this policy.
19. Certified CHS Officers working in Canada shall be the only CBSA employees who may recruit and handle a CHS program participant. CBSA employees shall not develop a relationship with a Human Source or recruit or handle a CHS program participant outside of Canada.

20. Certified CHS Officers will treat Confidential Human Sources and CHS program participants in an ethical and professional manner, compliant with the *Canadian Charter of Rights and Freedoms*, and be mindful of the responsibility they owe to the Human Source or CHS program participant, as well as the potential liability if they fail to meet this responsibility.
21. CBSA employees shall not knowingly use an agent or direct a person in such a way that it could cause him or her to become an agent for the CBSA.
22. Certified CHS Officers will ensure that CHS program participants understand they are not employees of the CBSA and are advised that CHS program participant cooperation will not have any bearing on current or future immigration proceedings or any other CBSA investigation, nor will it mitigate or provide immunity from investigation or administrative or criminal charges. They shall also ensure to advise CHS program participants on the role of the DRC and the mechanisms to report a complaint.
23. Where it is known or suspected that a CHS program participant is in immediate danger due to his or her relationship with the CBSA, there will be immediate referral to a law enforcement agency able to offer protection to the CHS program participant.
24. Where the CHS program participant is found to be involved or in some way implicated in an ongoing criminal investigation or administrative process under the *Immigration and Refugee Protection Act* (IRPA), it is essential that the CBSA notify the Crown counsel and, where applicable, the criminal investigator or Hearings Officer of the nature of the relationship to determine whether there is likely to be any issue regarding the use of this information.

## GOVERNANCE

25. The CHS program shall be centrally administered and coordinated to provide a central point for registration of CHS program participants and to support the consistent national application of policy and overall program integrity.
26. Certified CHS Officers shall not act jointly with another law enforcement agency as a Handler or Co-handler. In the exceptional circumstances where joint handling is recommended, approvals shall be sought in accordance with Section 32 of this policy. Any approved joint handling must be in strict accordance with this policy and the CBSA mandate. A written notification of the parameters within which the CBSA can handle CHSPP will be provided to the partner agency Co-handler and this action will be documented on the file.

## RISK ASSESSMENT

27. The CBSA shall apply strict conditions for acceptance of a CHS program participant, including the requirement for a thorough risk assessment, and to the management and termination of a relationship.
28. As part of the risk assessment, the Certified CHS Officer shall evaluate the effect that offering confidentiality will have on the ability to pursue criminal charges or bring removal proceedings against other persons.
29. Certified CHS Officers shall ensure that requests to register a person as a CHS program participant are based on the results of a risk assessment that balances the benefits of the information the person can provide against the risks posed by allowing a person to become a CHS program participant.
30. Proscribed Categories

The CBSA will not knowingly recruit, identify or use the following persons as a CHS program participant:



### 31. Special Approvals Categories

A potential CHS program participant who falls into any of the categories listed below will not be accepted as a CHS program participant unless an enhanced risk assessment is carried out and special approval granted by the President of the CBSA or delegate. The Special Approvals Categories are:

A person:

## **EXCEPTIONAL CIRCUMSTANCES**

32. Exceptional circumstances may warrant a deviation from the policy or procedures, directives or guidelines. Such a course of action may be undertaken only with the written approval from the VP or Associate Vice-President (AVP), Operations Branch, in consultation the VP or AVP Programs Branch. This does not apply to the Proscribed Categories or to the Special Approvals Categories of this policy.

## **INFORMATION MANAGEMENT**

33. A separate file must be created in the region and at HQ for each CHS program participant for the purposes of storing all information related to the use of a CHS program participant, including, but not limited to: biographical data, evaluation information, risk assessment, records of interaction, information provided, and related financial records.
34. The CBSA will retain the file and records of all terminated CHS program participants.
35. Relevant information provided by a Human Source or CHS program participant should be shared within the CBSA Enforcement and Intelligence program areas to ensure the maximum benefit to the CBSA.
36. Information provided by a Confidential Human Source or CHS program participant may be shared with law enforcement partners whenever authorized by law. The partner must be advised of the requirement for confidentiality.
37. All information must be managed, transmitted, stored, and handled in accordance with Treasury Board Guidelines and CBSA information management policies, as well as in compliance with the *Security of Information Act* (R.S., 1985, c. O-5). All information that could reveal the identity of a CHS program participant must be designated as Protected C.

## **FINANCIAL MANAGEMENT**

38. The CBSA financial framework addressing the management and monitoring of all aspects of CHS awards and expenditures will comply with the *Financial Administration Act, 1985* regulations and will establish procedures to calculate awards.
39. Reasonable expenses may be incurred in the course of developing relationships with prospective CHS program participants and current CHS program participants.
40. Monetary awards may be provided to a CHS program participant whenever previous information is assessed to be of significant value. No financial consideration will be promised or negotiated with a CHS program participant in order to solicit information.

## **OVERSIGHT AND REVIEW**

41. A Certified CHS Officer will review all active CHS files in his caseload at least once a year to report on the health and results of the relationship and submit the report to the DRC.
42. If a CHS program participant was registered prior to the effective date of this policy, the evaluation process must be carried out as soon as operationally possible, but no later than one calendar year from the effective date.
43. The DRC will convene a face-to-face meeting with each CHS program participant in his/her region to determine whether the relationship is being maintained in compliance with the policy, to provide financial oversight, and to otherwise ensure program integrity in the following circumstances:
  - a) Annually, where the CHS program participant has received a monetary reward in that year;
  - b) Annually, where the CHS program participant was subject to the Special Approvals process;
  - c) At any time, at the discretion of the DRC for program integrity and oversight reasons;
  - d) At the direction of the CHSC or Regional Director General;
  - e) At the request of the CHS program participant.

44. All DRC management and oversight activities will be reported to CBSA senior management as required by procedures.

## **APPROVAL LEVELS FOR REGISTRATION**

45. The standard level of approval for the registration of CHS program participants is the Director General, Operations Branch (HQ) or delegate level.
46. The standard level of approval of the registration of Special Approval category CHS program participants is at the President or delegate level.

47. Approving exceptions on applications to the policy in specific cases, in consultation with VP or AVP Programs Branch, is at the VP or AVP, Operations Branch level.
48. The standard level of approval for the forced termination of a CHS relationship with a particular CHS program participant is at the Regional Director General level, in consultation with DG Operations Branch (HQ).

## **APPROVAL LEVELS FOR OPERATIONAL PLANS**

49. The standard level of approval for meetings between Handlers and CHS program participants is the DRC in collaboration with the Front-Line Manager level.
50. The standard level of approval of debriefs and reports associated with a CHS program participant is the DRC in collaboration with the Front-Line Manager level.

## **APPROVAL LEVELS FOR FINANCIAL MANAGEMENT**

51. The standard level of approval for monetary award calculations and disbursements is at the Director General, Operations Branch (HQ) level.

## **ROLES AND RESPONSIBILITIES**

### **President**

#### **Responsibilities:**

1. Inform the Minister of Public Safety and Emergency Preparedness of any CBSA CHS operation that impact or appears to impact the integral role and functions of a CFI.
2. Inform the Minister of Public Safety and Emergency Preparedness of any CBSA CHS activity that may have a significant adverse impact, such as:
  - a) Giving rise to public controversy;
  - b) Impacting the safety of an individual;
  - c) Affecting domestic or intergovernmental relations;
  - d) Affecting Canadian relations with any country or international organization of states; and or
  - e) Contravening any of the guidelines set out in this direction and/or any CBSA policy associated with CHS.
3. Approving the registration of a CHS program participant as defined in the Special Approval category.

### **Vice-President or Associate Vice-President, Operations Branch**

#### **Responsibilities:**

4. Approving exceptions on applications to the policy in specific cases (this does not apply to Proscribed Categories or to the Special Approvals Categories of the policy), in consultation with VP or AVP Programs Branch.

## **Programs Branch**

### **Responsible Director General or delegate**

#### **Responsibilities:**

5. As functional program authority for the CHS program, providing functional direction on the application of the policy, interpreting applicable policy, legislation and jurisprudence, and consulting stakeholders where necessary.
6. Monitoring and maintaining the CHS Policy and any annexes, procedures, guidelines, and directives.
7. Reviewing this policy and any annexes, procedures, guidelines, and directives on an ongoing basis to ensure that they meet the needs of the CBSA and that they are in compliance with all relevant legislation and jurisprudence.
8. Setting standards for the minimum training required to deal with CHS program participants and the information they provide.
9. Measuring and reporting the national performance of the CHS program.

## **Operations Branch**

### **Responsible Director General (HQ) or delegate**

#### **Responsibilities:**

10. Administering the national operations of the CHS program.
11. Implementing the policy and monitoring compliance with it and any associated procedures or directives. Ensuring that compliance monitoring occurs on a regular basis to ensure consistent national program delivery.
12. In consultation with the Director General, Programs Branch, making exceptions on a regional basis to allow management of CHS program participants' cases to continue where training and certification under this policy have not yet been implemented.

13. Providing subject matter expertise to the Programs Branch and to the Regions in the management and administration of Human Sources and CHS program participants.
14. Following the CHS financial management framework, managing source development expense disbursements, and approving monetary award calculations and disbursements.
15. Recommending to the responsible Director General, Programs Branch, amendments or updates to the policy or any annexes, procedures, guidelines, directives, and training programs.
16. Reporting to the President, any operational occurrences, issues or information which may have a significant impact upon the CHS program's integrity.

## **Operations Branch**

### **Regional Directors General (Regions)**

#### **Responsibilities:**

17. Implementing the policy and monitoring compliance with it and any associated procedures or directives within the region.
18. Approving the forced termination of a CHS relationship with a particular CHS program participant in consultation with DG, Operations Branch (HQ).
19. Reviewing and submitting any policy concerns or disputes to the responsible DG, Operations Branch (HQ), for resolution.
20. Resolving any conflicts of interest between the CBSA and partner agencies in the use of a CHS program participant.

### **Enforcement and Intelligence Directors (Regions)**

#### **Responsibilities:**

21. Assigning a regional CBSA Manager of Enforcement and Intelligence as the DRC.

22. Resolving any disputes between program areas as referred by the DRC, and referring any unresolved disputes to the Regional Director General.
23. Recommending the forced termination of a CHS relationship with a particular CHS program participant to the Regional Director General.
24. Referring any conflicts of interest between the CBSA and partner agencies in the use of a CHS program participant to the Regional Director General.
25. Following the CHS financial management framework, recommending approval for expenses through a standardized source development expenditure report and recommending approval for monetary awards to the DG, Operations Branch (HQ), and ensuring that the Regional Director General is kept apprised of source development expenditures and awards.
26. Authorizing, in consultation with the DRC and Handler, the release of information to partner agencies.
27. Providing Headquarters (Operations/Programs Branch) with regular performance reports.

### **Designated Regional Coordinators (DRC)**

#### **Responsibilities:**

28. Acting as regional point of contact for the regional CHS program and authorizing the submission of registration applications to the CHSC.
29. Providing subject matter expert guidance to Front-Line Managers and officers.
30. Maintaining the regional list of CBSA employees qualified to handle CHS program participants.
31. Ensuring that only trained CBSA Certified CHS Officers handle a CHS program participant and assigning the Handler and Co-handler in consultation with Front-Line Managers.
32. Approving meetings, in collaboration with Front-Line Managers, between Handlers and Human Sources or CHS program participants

33. Reviewing and approving, in collaboration with Front-Line Managers, written documentation, debriefs and reports associated with a CHS program participant.
34. Monitoring meetings between a Certified CHS Officer and a CHS program participant and maintaining a record of meetings in the appropriate CHS program participant file.
35. Reviewing and approving written documentation associated with a CHS program participant.
36. Periodically auditing CHS files and Certified CHS Officers' notebooks and reviewing the relationship between Handler/Co-handler and CHS program participant.
37. Reviewing and assessing information received from a CHS program participant.
38. Recommending the termination of a relationship with a particular CHS program participant.
39. Following the CHS financial management framework, recommending approval for expenses through a standardized source development expenditure report and recommending approval for monetary awards.
40. Recommending the release of information to partner agencies.
41. Facilitating the referral of a CHS program participant who is in danger due to his or her relationship with the CBSA to a law enforcement agency that may be able to offer protection to the CHS program participant.
42. Providing the responsible DG, Operations Branch, with a report, without delay, on any occurrences which may impact the CBSA's integrity or on any information or issues which may be of significant interest to the CBSA.
43. Auditing CHS files and Officers' notebooks and reviewing the relationship between Handler/Co-handler and CHS program participants on a regular basis.

## **Front-Line Managers**

**Responsibilities:**

44. Recommending approval of registration applications and forwarding to the DRC.
45. Reviewing Source Development Expenditure Reports and Award Assessments to ensure compliance with the CHS financial management framework.
46. Suggesting Handlers and Co-handlers to the DRC.
47. Reviewing and assessing information received from Human Sources or CHS program participants.
48. Monitoring the relationships and interactions between the Handler/Co-handler and Human Sources or CHS program participants.

**Handlers**

**Responsibilities:**

49. Conducting preliminary interviews of potential CHS program participants and performing in-depth background checks; advising the DRC of the results of the interviews and checks; providing recommendations and conducting risk assessments.
50. Managing all contacts with a CHS program participant, briefing CHS program participants on acceptable conduct in accordance with the policy and procedures, and recording and reporting all information, meetings, and contacts and advising the DRC accordingly.
51. Evaluating and assessing the information provided by the CHS program participants.
52. Ensuring that the regional files contain all required documents and approvals.
53. Carrying out an annual review of each file and personally interviewing each CHS program participant to ensure the stability of the CHS program participant and the relationship, and reporting any concerns to the DRC.

54. Preparing the application for and presenting awards, following the CHS financial management framework.
55. Referring or requesting the referral of a CHS program participant who is in danger due to his or her relationship with the CBSA to a law enforcement agency that may be able to offer protection to the CHS program participant.

### **Co-handlers**

#### **Responsibilities:**

56. Supporting the Handler in the management of a CHS program participant from an administrative and operational perspective.
57. Providing an alternate point of contact in the absence of the Handler.
58. Witnessing and corroborating all contact, meetings, events, including the presentation of awards, between the CHS program participants and the Handler.
59. Assisting the Handler in the annual review of files.